

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 7. Mediation Questionnaire

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9th Cir. Case Number(s)	23-2882
Case Name	Center for Biological Diversity v. United States Forest Service
Counsel submitting this form	Benjamin W. Richmond
Represented party/parties	United States Forest Service, et al. (Appellants)

Briefly describe the dispute that gave rise to this lawsuit.

Plaintiffs and Consolidated Plaintiffs filed these suits against the Forest Service, the Fish and Wildlife Service, and personnel at those agencies to challenge their authorizations and analyses for the Black Ram Project, a vegetation management and forest health project on the Kootenai National Forest in Lincoln County, Montana. The Black Ram Project is designed to improve the 95,412-acre Project area's resilience to disease, drought, insects, and fire and improve big game habitat, watershed conditions, and recreational opportunities. Plaintiffs brought claims under the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Endangered Species Act (ESA), and the Administrative Procedure Act. Consolidated Plaintiffs brought claims under the NEPA, NFMA, and the Administrative Procedure Act.

Briefly describe the result below and the main issues on appeal.

On August 17, 2023, the district court entered an opinion and judgment granting in part and denying in part the parties' motions for summary judgment. The court ruled against Federal Defendants on a number of plaintiffs' claims under the ESA, NEPA, and NFMA. Among other things, the court held that Fish and Wildlife Service's Biological Opinion, and the Forest Service's reliance on that Biological Opinion, was arbitrary and capricious, that the Forest Service inadequately assessed environmental impacts under NEPA and was required to prepare an EIS, and that the Forest Service failed to comply with the Forest Plan under NFMA.

At this point, Federal Defendants expect that this appeal will focus on, among other issues: (1) whether the Fish and Wildlife Service used the best available science to establish an environmental baseline for the grizzly bear in the Biological Opinion; (2) whether the Forest Service complied with the Forest Plan and NEPA in assessing possible unauthorized motorized use in the Project area; (3) whether the Forest Service was required to prepare an Environmental Impact Statement; and (4) whether the Forest Service was required to supplement its NEPA analysis for the project.

Describe any proceedings remaining below or any related proceedings in other tribunals.

There are no proceedings below, other than pending motions for attorneys' fees. There is a pending appeal in this court, Alliance for the Wild Rockies v. Marten, 9th Cir. No. 23-2553, which raises similar issues concerning unauthorized motorized use.

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)